

[Unapproved and Subject to Change]
CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
MINUTES OF MEETING, Public Session

May 10, 2007

Call To Order: Chairman Ross Johnson called the meeting to order at 10:00 a.m., at 428 J Street, Eighth Floor, Sacramento, California. Chairman Johnson, and Commissioners Timothy A. Hodson, Gene Huguenin, Bob Leidigh, and Ray Remy were present.

Item #1. Public Comment. This portion of the meeting is reserved for comment on items not on the agenda. Under the Bagley-Keene Act, the Commission cannot act on items raised during public comment, but may respond briefly to statements made or questions posed; request clarification; or refer the item to staff.

There was no public comment.

Item #2. Approval of the April 12, 2007, Commission meeting minutes.

Moved by Commissioner Remy and seconded by Commissioner Hodson.

AYES: Commissioners Remy, Huguenin, Leidigh, Hodson, and Chairman Johnson. The motion passed 5-0.

Item #3. In the Matter of Patricia Paul, FPPC No. 07/087. Respondent Patricia Paul was a member of the Stanislaus County Board of Supervisors in calendar year 2002. In this matter, Respondent Paul have entered into a stipulation for failing to abide by the annual gift limit, in violation of subdivision (a) of Section 89503 of the Government Code (1 count); and failed to disclose required information regarding the receipt of gifts in a statement of economic interests, in violation of subdivision (a) of Section 87207 of the Government Code (1 count).

Moved by Commissioner Remy and seconded by Commissioner Hodson to approve total of two counts in the amount of six thousand five hundred dollars (\$6,500) monetary penalty.

AYES: Commissioners Remy, Huguenin, Leidigh, Hodson, and Chairman Johnson. The motion passed 5-0.

Item #4. In the Matter of Marco Barbosa, FPPC No. 05/637. Marco Barbosa, a member of the California Strawberry Commission, entered into a stipulation for failing to timely file a 2004 annual statement of economic interests, in violation of Section 87300 of the Government Code (1 count).

Moved by Commissioner Remy and seconded by Commissioner Hodson to approve one count in the amount of one hundred dollars (\$100) monetary penalty.

AYES: Commissioners Remy, Huguenin, Leidigh, Hodson, and Chairman Johnson. The motion passed 5-0.

Item #5. In the Matter of Mary Moran, FPPC No. 06/991. Mary Moran, Board Member of the Medical Board of California, entered into a stipulation for failing to timely file her 2005 annual statement of economic interests in violation of Section 87302 of the Government Code

(1 count).

Moved by Commissioner Remy and seconded by Commissioner Hodson to approve one count in the amount of one hundred dollars (\$100) monetary penalty.

AYES: Commissioners Remy, Huguenin, Leidigh, Hodson, and Chairman Johnson. The motion passed 5-0.

Item #6. Failure to Timely File Major Donor Campaign Statements. The following entity has entered into a stipulation for failing to file major donor campaign statements that were due during calendar year 2004, in violation of Section 84200 of the Government Code:

- a. **In the Matter of Paul Turley, FPPC No. 07/0025.** Paul Turley of Granada Hills failed to timely file semi-annual campaign statements disclosing contributions totaling \$10,000 in 2004 (1 count).

Moved by Commissioner Remy and seconded by Commissioner Hodson to approve one count in the amount of eight hundred dollars (\$800) monetary penalty.

AYES: Commissioners Remy, Huguenin, Leidigh, Hodson, and Chairman Johnson. The motion passed 5-0.

Item #7. Failure to Timely File Late Contribution Reports – Proactive Program. The following persons have entered into a stipulation for failing to file a late contribution report in 2005 in violation of Section 84203 of the Government Code:

- a. **In the Matter of DMJMH+N, Inc., FPPC No. 07/0045.** DMJMH+N, Inc. of Los Angeles failed to timely disclose a late contribution totaling \$25,000 (1 count).

Moved by Commissioner Remy and seconded by Commissioner Hodson to approve one count in the amount of three thousand five hundred dollars (\$3,500) monetary penalty.

AYES: Commissioners Remy, Huguenin, Leidigh, Hodson, and Chairman Johnson. The motion passed 5-0.

- b. **In the Matter of Suzanne Duca, FPPC No. 07/0046.** Suzanne Duca of Santa Barbara failed to timely disclose a late contribution totaling \$10,000 (1 count).

Moved by Commissioner Remy and seconded by Commissioner Hodson to approve one count in the amount of one thousand five hundred dollars (\$1,500) monetary penalty.

AYES: Commissioners Remy, Huguenin, Leidigh, Hodson, and Chairman Johnson. The motion passed 5-0.

- c. **In the Matter of James A. Bisenius, FPPC No. 07/0067.** James A. Bisenius of Portland, Oregon, failed to timely disclose late contributions totaling \$25,000 (1 count).

Moved by Commissioner Remy and seconded by Commissioner Hodson to approve one count in the amount of three thousand five hundred dollars (\$3,500) monetary penalty.

AYES: Commissioners Remy, Huguenin, Leidigh, Hodson, and Chairman Johnson. The motion passed 5-0.

- d. **In the Matter of John R. Luongo, FPPC No. 07/0075.** John R. Luongo of Hillsborough failed to timely disclose a late contribution totaling \$20,000 (1 count).

Moved by Commissioner Remy and seconded by Commissioner Hodson to approve one count in the amount of three thousand dollars (\$3,000) monetary penalty.

AYES: Commissioners Remy, Huguenin, Leidigh, Hodson, and Chairman Johnson. The motion passed 5-0.

- e. In the Matter of Mark J. Barrenechea, FPPC No. 07/0105.** Mark J. Barrenechea of Berkeley failed to timely disclose a late contribution totaling \$10,000 (1 count).

Moved by Commissioner Remy and seconded by Commissioner Hodson to approve one count in the amount of one thousand five hundred dollars (\$1,500) monetary penalty.

AYES: Commissioners Remy, Huguenin, Leidigh, Hodson, and Chairman Johnson. The motion passed 5-0.

- f. In the Matter of Tides Foundation, FPPC No. 07/0088.** The Tides Foundation of San Francisco failed to timely disclose a late contribution totaling \$10,000 (1 count).

Moved by Commissioner Remy and seconded by Commissioner Hodson to approve one count in the amount of one thousand five hundred dollars (\$1,500) monetary penalty.

AYES: Commissioners Remy, Huguenin, Leidigh, Hodson, and Chairman Johnson. The motion passed 5-0.

Item #9. Prenotice Discussion of Proposed Regulation 18420.5 - Campaign Filing Requirements for the February 5, 2008, Statewide Election. Because California's presidential primary election has been moved forward from June to February 5, 2008, this proposed regulation clarifies the filing schedule for state measures that may be on the February 5, 2008, ballot.

Commissioner Leidigh inquired about the particular legislation that staff is seeking to modify the filing dates for the February 5, 2008, primary. Staff responded that there is no bill at the moment. Staff is working on the languages and has submitted it to a "working group" that staff has formed and hope to have the bill out soon.

Moved by Commissioner Leidigh and seconded by Commissioner Huguenin to publish notice for adoption in August.

AYES: Commissioners Remy, Huguenin, Leidigh, Hodson, and Chairman Johnson. The motion passed 5-0.

Item #10. Prenotice Discussion of Adoption of Regulation 18361 and Amendment of Regulation 18361.7 - Expansion of Executive Director's Discretion to Delegate Authority to Conduct Probable Cause Hearings. Staff proposes adoption of Regulation 18361 and amendment of Regulation 18361.7, enabling the Executive Director to delegate to Commission staff, other than the General Counsel, the authority over probable cause proceedings and related enforcement duties. This expanded discretion would ensure that these duties are carried out with fairness and impartiality to all parties.

Staff recommends amending Regulation 18360(g) to correct an out-of-date cross reference to the original Regulation 18361 that was the predecessor to the Regulation 18361.1 series. Currently there is no Regulation 18361.

Commissioner Leidigh commented that he spoke to Ronald Diedrich and his number two assistant from the Office of Administrative Hearings (OAH). Upon further and more detailed review of the proposed regulations OAH would like further clarification. Commissioner Leidigh suggested the Commission enter into discussion with OAH to make sure the regulations would mesh well from their perspective.

Commissioner Huguenin recommended modifying Regulation 18361. Currently proposed Regulation 18361 does not require the delegation to be “in writing” when enforcement proceedings are delegated outside the Commission. Commissioner Huguenin would like the regulation to be consistent and have “in writing” for both instances within the Commission and outside the Commission, when enforcement proceedings are delegated.

Chairman Johnson agreed that this is a fair comment and staff should respond to the recommendation.

Moved by Commissioner Hodson and seconded by Commissioner Leidigh to publish notice for adoption in August.

AYES: Commissioners Remy, Huguenin, Leidigh, Hodson, and Chairman Johnson. The motion passed 5-0.

Item #11. Payments by Sponsors for Fundraising Events Held by Sponsored Committees.

A proposal by Charles H. Bell, Jr. with Bell, McAndrews & Hiltachk, LLP is before the Commission to rescind staff advice to the effect that Regulation 18215(c)(16) does not exempt from the Act’s definition of “contribution” a sponsor’s payments towards a fundraiser put on by its sponsored PAC. Mr. Bell’s proposal also urges the Commission to adopt one or more regulations codifying this exception.

Staff, however, suggested that the Commission decline to take either of these steps, and instead that it calendar a public rulemaking process to develop a regulation clarifying the scope of the committee contribution limit imposed by Section 85303. Disagreements over the application of this statute underlie the present dispute over Regulation 18215(c)(16).

Mr. Bell came before the Commission to express the concerns of the regulated community that are recipient committees that are sponsored by corporations, trade associations and labor organization. Mr. Bell would like direction from the Commission to have the narrower issue be resolved, i.e., whether a PAC’s general fundraising expenses are subject to the Proposition 34 limits.

Carl G. Borden, associate counsel with the California Farm Bureau Federation came before the Commission to support Mr. Bell’s position and to reemphasize the issue of fundraising used for the purpose of making contributions to candidates for state elective office

Lois Suder, chief operating officer with the California Hospital Association came before the Commission. She explained for those that represent members that are 501(c)(3) organizations, which means that under the IRS code the members can’t give moneys to candidate-support PACs. In her situation she would need some other means to raise money for her PAC. In her association she has an individual that is primarily responsible for raising money for the PAC. Until the Advice Letter she did not realize that the individual’s salary would come out of the

PAC. This has had an impact on the association because it has significantly reduced the dollars that the PAC could have to use for candidate-support purposes.

Mr. Bell came back before the Commission to answer more questions from the Commissioners.

Commissioner Huguenin said he is troubled by the apparent desire and the need of the regulated community to have some clarification on whether they still have to live under the regulation as articulated in the Bell Advice Letters or whether the Commission is going to get into Proposition 34 and parsing what it means to be “for the purpose of making contributions to candidates” and what else it may mean.

Commissioner Leidigh agreed with Commissioner Huguenin that the regulated community deserves some answers. Commissioner Leidigh made a motion that as to Mr. Bell’s advice request letter of April 19, 2006, staff would respond to paragraphs (1), (2), and (3) of Item A that those activities are encompassed within the exception of CCR 18215(c)(16). Paragraph (5), down to the newsletter, also would be encompassed. He would also have staff come back at the June meeting with a regulatory calendar update to deal with these issues.

Chairman Johnson expressed some reservations about giving staff direction at this time to send a revised Advice Letter and preferred that staff draft a revised letter and bring it back before the Commission at the next meeting. Commissioner Leidigh accepted this as a friendly amendment and then restated his motion.

Moved by Commissioner Leidigh and seconded by Commissioner Huguenin to have staff draft a new Advice Letter responding to Mr. Bell’s request containing the modifications discussed. AYES: Commissioners Remy, Huguenin, Leidigh, Hodson, and Chairman Johnson. The motion passed 5-0.

Item #12. Approval of Revised Campaign Disclosure Manuals. Staff: Technical Assistance Division Chief Carla Wardlow. Staff will request approval of revised manuals for local candidates and their controlled committees (Manual 2) and for ballot measure committees (Manual 3), as well as for the 2007 Addendum to Manuals C and E. The revised manuals reflect legislative and regulatory changes during 2006 and 2007.

Commissioner Leidigh suggested on page 17 of the 2007 Addendum under “Election Expenditures by Local Agencies” to reference Section 8314 to apply to state and local agencies. On page 18 under “Statute of Limitations Concerning Administrative Proceedings” to not include the phrase “As of January 1, 1998,” because it is superfluous at this late date. Commissioner Leidigh then asked if any of the numerous members of the regulated community in attendance had any comments or concerns. No one wished to speak.

Moved by Commissioner Leidigh and seconded by Commissioner Remy to adopt with changes. AYES: Commissioners Remy, Huguenin, Leidigh, Hodson, and Chairman Johnson. The motion passed 5-0.

Item #13. Legislative Report. Staff: Legislative and Communications Coordinator Whitney Barazoto.

There was no discussion.

Item #14. Litigation Report. Staff: General Counsel Scott Hallabrin.

There was no discussion.

Item #15. Executive Director's Report. Staff: Executive Director Michael B. Salerno.

There was no discussion.

Item #16. Chairman's Report. Staff: Chairman Ross Johnson.

The Chairman generally addressed the issues he believed the Commission faces and should address in the upcoming months.

Executive Director Michael Salerno proposed some changes to the Commission Meeting Schedule, and suggested there should not be a meeting in the month of July but instead that the Commission meet on August 16, 2007. He also suggested a meeting on September 12, 2007, an informational hearing on October 11, 2007, a regular meeting on November 8, 2007, December 13, 2007, an information hearing January 10, 2008, and a regular meeting February 14, 2008.

Chairman Johnson adjourned open session at 12:18p.m.; advising the Commission would immediately go into closed session.

The Commission returned to open session at 2:41p.m. Chairman Johnson advised that no reportable action was taken in closed session, and adjourned the meeting. The meeting was adjourned at 2:43p.m.

Dated: May 30, 2007

Respectfully submitted,

Kim Truong
Commission Assistant

Approved by:

Ross Johnson
Chairman